REMARKS

Applicants have studied the Final Office Action dated April 25, 2006. It is submitted that the application, as currently amended, is in condition for allowance. Claims 19, 25, and 31-47 are pending. Claims 19, 25, and 31 are amended. Reconsideration and allowance of the pending claims in view of the above amendments and the following remarks is respectfully requested.

Rejection under 35 U.S.C. §103(a)

In items 5-6 of the Office Action, the Examiner rejected claims 19, 25, and 31-47 under 35 U.S.C. § 103(a) as being unpatentable over Seymour et al. (U.S. Patent No. 6,871,190) in view of Ojha et al. (U.S. Patent No. 6,598,026).

Before discussing the prior art in detail, it is believed that a brief review of the invention as claimed, would be helpful. Independent claims 19, 25, and 31 have been amended to clarify the present invention. Independent claims 19, 25, and 31 recite, *inter alia*:

communicating with at least <u>two</u> of the plurality of auction sites using the information necessary to access each auction database through <u>both</u> the separate user interface <u>and the separate command language corresponding to each auction site;</u>

determining if the product is available through both of the at least two of the plurality of auction sites, and in response to the product being available and until at least one of a (i) bid is accepted and (ii) time has expired for either of the at least two of the plurality of auction sites, performing the following:

determining if a current bid from both of the auction sites is below a maximum limit permitted, and in response to the current bid being below, performing the following without further user interaction;

placing at least two new bids including a first bid <u>in a first command language</u> for the product at a first of the at least two of the plurality of auction sites and a second bid <u>in a second command language</u> for the product at a second of the at least two

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of the plurality of auction sites in order for at least two bids to be active on the at least two of the plurality of auction sites at a same time;

determining if at least one of the new bids has been accepted and in response to at least one of the new bids being accepted, canceling outstanding bids at other auction sites of the plurality of auction sites where the at least one of the product and service is available; and

determining if time has expired on any of the at least two new bids for a given auction site of the plurality of action sites and in response to the time expiring, canceling any outstanding bid for the given auction site.

Support for this amendment is found in the application as originally filed on page 11, Auction Profile Database, item 2. No new matter has been added. The present invention solves the problem of the prior art by allowing purchasers to bid on goods/services at multiple auction sites **run by Independent third parties** automatically and simultaneously. The present invention enables communication with multiple auction databases where the interface **and command language of each auction database is different.** The invention simultaneously accesses a plurality of auction sites through use of a configuration profile and an auction profile database, places a bid for a product and, if the bid is accepted at any of the plurality of auction sites, cancels outstanding bids at the other auction sites. **The present invention takes place on the buyer side only and does not require any special software or any action at all by the seller as do the two references cited by the Examiner.**

The Seymour et al. reference discloses an interactive system that includes two interactive components that work together to perform bidding and purchasing in an auction style transaction. The Seymour et al. system includes both a proprietary "bidding agent" and a proprietary "selling agent" that communicate so as to follow preconfigured buying and selling strategies to perform auctions over a communication

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network. Seymour et al., col. 5, lines 16-18. Importantly, **the bidding agent 36 is always present on the bidder site 20 and the selling agent 56 is always present on the seller site 40**. See Seymour et al., all independent claims and col. 3, line 60 through col. 4, line 29. Furthermore, the agents communicate with each other in their own language—SGML. Seymour et al., col. 5, lines 27-31.

A buyer using the Seymour et al. system utilizes a bidding agent to survey all available auction sites that have the selling agent installed, are offering for sale the item being sought by the buyer, and meet a set of user input parameters. Seymour et al., col. 7, lines 20-39. Clearly, Seymour et al. is limited to only those sites that have the selling agent installed. Once the sites are found, they are ranked according to a rating system. Seymour et al., col. 7, lines 54-67. Specifically, the seller site at which the next auction is due to commence is always given the highest ranking. Seymour et al., col. 7, lines 60-61.

Seymour et al. differ from the present invention in at least two major distinguishable aspects. First, Seymour et al. are not concerned with and do not teach or suggest bidding on an item at two sites simultaneously. Seymour et al. merely go through the process of creating a ranking list so that the user will have an order to which to **sequentially** access cites within the compiled list of cites. Seymour et al., col. 8, lines 1-3.

Secondly, Seymour et al. use a single language, SGML, to communicate between its two components, one being at the seller site and the other at the bidder site. Seymour et al., col 5, lines 27-28. The presently claimed invention, in contrast, places at least two new bids, including a first bid, <u>in a first command language</u> for the product at a first of the at least two of the plurality of auction sites and a second bid <u>in a second command language</u> for the product at a second of the at least two of the plurality of auction sites in order for at least two bids to be active on the at least two of the plurality of auction sites <u>at a same time</u>.

The Examiner goes on to combine Ojha et al.[1] The system in Ojha et al. is directed to a method and apparatus for brokering transactions from a plurality of sellers and a plurality of buyers. Each of the sellers and buyers has access to <u>a single proprietary database</u> where all the items for the transaction are listed. See Ojha's Summary of the Invention, and more specifically col. 2, lines 47-62, col. 3, lines 59-60, and col. 9, lines 37-38. Accordingly, the method and system as taught by Ojha et al. is a centralized database with separate logon's and privileges. Ojha requires action by the sellers; specifically, logging on to the Ojha server and entering their items and a host of other information. Ojha, col. 2, lines 50-52 and col 8, lines 51-54. In contrast, the present invention works with existing third-party auction sites such as EBay and Yahoo where each auction site not only has a separate database for listing items and services in the auction at the given site, but also, each auction site has a distinct user interface and command language. Further, Ojha et al. requires user interaction to complete the negotiation process of buying and selling. See Ojha at col. 12, lines 29-44. The present invention recites automatically completing the auction process by and "<u>performing the following without further user interaction.</u>"

Contrary to the Examiner's conclusion that it would have been obvious to modify Seymour et al. to adopt the teaching of Ojha et al. for the purpose of enabling the buyer to place at least two bids on at least two of the plurality of auction sites simultaneously, in order to increase the likelihood that at least one of the sellers can offer a price acceptable to the buyer, neither Seymour et al. nor Ojha et al. teach or suggest placing bids on two auction sites simultaneously, let alone placing "at least two new bids including a first bid <u>in a first command language</u> for the product at a first of the at least two of the plurality of auction sites and a second bid <u>in a second command language</u> for the product at a second of the at least two of the plurality of auction sites in order for at least two bids to be active on the at least two of the plurality of auction sites <u>at a same time.</u>" In fact, the combination of the two would render the invention of Seymour et al. inoperative. The Federal Circuit has consistently held that when a §103 rejection is based upon a modification of a reference that destroys the intent, purpose or function of

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[1] Applicant makes no statement as to whether such a conclusion is proper.

the invention disclosed in the reference, such a proposed modification is not proper and the *prima facie* case of obviousness can not be properly made. See In re Gordon, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). Here, the intent, purpose, and function of Seymour et al. is to enter auctions by **sequentially** following a ranking of auction sites, i.e., participate in only one auction at a time. Furthermore, Seymour et al. only communicates using a single language, SGML, with those sites having the other component of the two-part bidding system. Even if, arguendo, Ojha et al. shows canceling outstanding bids at other auction sites, adding that element to Seymour et al. would destroy the intent, purpose, and function of Seymour et al. because there is only one auction being participated in and canceling that auction would always result in not purchasing the desired item.

The Examiner goes on to state that it would have been obvious to modify Seymour et al. with Ojha et al. *"for the purpose of eliminating the risk that the bidder fails to pursue some of those bids that may have higher approximate price estimated by the bidder."* The Examiner has not, however, shown where in either of the cited references this has been suggested. Seymour et al. focus on developing bidding strategies to be employed at a single auction only. There is no suggestion for participating in multiple auctions simultaneously, and, therefore, certainly no suggestion to cancel outstanding bids at other auction sites. Ojha et al. is a customized centralized database for aggregating listing information from several different buyers and sellers.

The present invention eliminates the need to create a proprietary centralized database which includes information from various participating buyers as taught by Ojha et al. for brokering the sale negotiations of multiple products. Because the present invention is directed to buyers bidding on desired items placed at auction by third-party unrelated sellers across multiple third-party unrelated auction web sites, and the present invention uses two separate command languages of the separate web sites, there is no reason for the present invention to maintain a centralized database of the various buyers or a database accessible by various sellers. The ability to simultaneous log on to multiple

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auction websites and to simultaneously bid on items at different auction websites is no where suggested or taught in Ojha et al. taken alone and/or combined with Seymour et al.

When there is no suggestion or teaching in the prior art, the suggestion can not come from the Applicant's own specification. The Federal Circuit has repeatedly warned against using the Applicant's disclosure as a blueprint to reconstruct the claimed invention out of isolated teachings of the prior art.[2] One of skill in the art would not be motivated to seek out Ojha et al. and expand the basic premise of Seymour et al. to utilize an aspect of Ojha et al. that is allegedly found in the present invention.

It is accordingly believed to be clear that Seymour et al., whether taken alone or in any combination with Ojha et al., neither shows nor suggests the features of claims 19, 25, and 31. Claims 19, 25 and 31 are, therefore, believed to be patentable over the art. The dependent claims are believed to be patentable as well because they all are ultimately dependent on either claim 19, 25 or claim 31.

CONCLUSION

Applicants acknowledge the continuing duty of candor and good faith to disclosure of information known to be material to the examination of this application. In accordance with 37 CFR §1.56, all such information is dutifully made of record. The foreseeable equivalents of any territory surrendered by amendment are limited to the territory taught by the information of record. No other territory afforded by the doctrine of equivalents is knowingly surrendered and everything else is unforeseeable at the time of this amendment by the Applicants and their attorneys.

Applicants respectfully submit that all of the grounds for rejection stated in the Examiner's Office Action have been overcome, and that all claims in the application are allowable. No new matter has been added. It is believed that the application is now in

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[2] See MPEP § 2143 and Grain Processing Corp. v. American Maize-Products, 840 F.2d 902, 907, 5 USPQ2d 1788 1792 (Fed. Cir. 1988) and In re Fitch, 972 F.2d 160, 12 USPQ2d 1780, 1783-84 (Fed. Cir. 1992).

condition for allowance, which allowance is respectfully requested.

PLEASE CALL the undersigned if that would expedite the prosecution of this application.

Respectfully submitted,

Date: July 25, 2006

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